

N.J.A.C. 7:26B - INDUSTRIAL SITE RECOVERY ACT RULES

Subchapter 1

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SUBCHAPTER 1. GENERAL INFORMATION

7:26B-1.1 Scope and authority

This chapter constitutes the rules governing the implementation of the Industrial Site Recovery Act, P.L. 1993 c.139 (N.J.S.A. 13:1K-6 et seq.).

7:26B-1.2 Construction

This chapter shall be liberally construed to allow the Department to implement fully its statutory functions pursuant to the Act.

7:26B-1.3 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operations to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof.

7:26B-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" or "ISRA" means the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

"Agricultural commodity" means any plant or part thereof, or animal or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

"Applicable remediation standard" means a remediation standard defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Area of concern" means any area defined as such pursuant to the Technical Requirements for Site Remediation.

"Authorization letter" means a written statement issued by the Department that authorizes an owner or operator of an industrial establishment to transfer ownership or operations or in the case of a cessation of operations, authorizes the cessation of operations as it relates to the owner and operators obligation to remediate the industrial establishment.

"Authorized agent" means the person authorized to receive correspondence or communications, on behalf of the person responsible for conducting the remediation of the industrial establishment, for matters covered by this chapter.

"Change in ownership" means, unless otherwise provided at N.J.A.C. 7:26B-2.2:

1. The sale or transfer of the business of an industrial establishment;
2. The sale or transfer of any of the real property on which the industrial establishment operates, including any of the block(s) and lot(s) upon which the operations of the industrial establishment are conducted and any contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land;
3. The sale or transfer of title to an industrial establishment or the real property of an industrial establishment by exercising an option to purchase;
4. The sale or transfer of a general partnership interest in a general partnership or in a limited partnership or the sale or transfer of a limited partnership interest in a limited partnership where the limited partner is liable for the obligation of the limited partnership pursuant to the limited partnership agreement or by law, which results in any one of the following:
 - i. The change in the general partner, or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the direct owner or operator of the industrial establishment;
 - ii. The reduction, by 10 percent or more of the assets available for remediation of the industrial establishment; or
 - iii. The change in the general partner or the limited partner where the limited partner is liable for the obligations of the partnership, holding the controlling interest in the indirect owner of the industrial establishment where the indirect owner's assets would be available for remediation pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(b), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b);
5. The sale or transfer of the sole general partner's entire interest in a limited partnership where the limited partnership is one of the following:
 - i. The limited partnership is the direct owner or operator of the industrial establishment; or

ii. The limited partnership has the controlling interest in the indirect owner of the industrial establishment where the indirect owner's assets would be available for remediation pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(b), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(b);

6. The reorganization of a general or limited partnership into a corporation, limited liability company, limited liability partnership or other similar business entity;

7. The sale or transfer of stock in a corporation or interest in a limited liability company, resulting in a merger or consolidation involving the direct owner or operator or indirect owner of the industrial establishment;

8. The sale or transfer of stock in a corporation or interest in a limited liability company, resulting in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of the industrial establishment; and

9. The sale or transfer of interests in a limited liability company that owns or operates an industrial establishment, is the direct owner or operator or indirect owner of an industrial establishment, where the indirect owner's assets would be available for remediation pursuant to the criteria listed at N.J.A.C. 7:26B-2.2(b), that would reduce, by 10 percent or more, the assets available for remediation of the industrial establishment.

"Closing operations" means, unless otherwise provided at N.J.A.C. 7:26B-2.4:

1. The cessation of operations which, as measured on a constant, annual date-specific basis, within any five-year period:

i. Results in at least a 90 percent reduction in the total value of the product output from the entire industrial establishment; or

ii. For industrial establishments which product output is undefined:

(1) Results in at least a 90 percent reduction in the number of employees; or

(2) Results in at least a 90 percent reduction in the area of operations of an industrial establishment;

2. Any temporary cessation of operations of an industrial establishment for a period greater than two years;

3. An industrial establishment becomes nonoperational for health or safety reasons as a result of a judicial proceeding or final agency action;

4. The initiation of bankruptcy proceedings pursuant to Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 701 et seq. or the filing of a plan of

reorganization that provides for a liquidation pursuant to Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 1101 et seq.;

5. Any change of operations of an industrial establishment that changes the industrial establishment's Standard Industrial Classification number to one that is not subject to ISRA;

6. The termination of a lease or sublease, unless there is no disruption in operations of the industrial establishment; and

7. The assignment of a lease or sublease, unless there is no change in the operator of the industrial establishment and there is no disruption in operations of the industrial establishment.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her authorized representative.

"Controlling interest" means the interest held by a person or person(s) who possess(es) the power to direct or cause the direction of the management and policies of a corporation, partnership or other business entity based on the criteria in N.J.A.C. 7:26B-2.2(d). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(d), this definition does not require that a person submit an application for an applicability determination in order for a person or transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(d).

"Corporate reorganization not substantially affecting ownership" means the restructuring or reincorporation by the management or owners of an entity, which does not diminish the availability of assets for any remediation, diminish the Department's ability to reach those assets, or otherwise hinder the owner's or operator's ability to remediate the industrial establishment based on the criteria in N.J.A.C. 7:26B-2.2(c). Notwithstanding the reference to N.J.A.C. 7:26B-2.2(c), this definition does not require that a person submit an application for an applicability determination in order for a transaction to satisfy the standards set forth at N.J.A.C. 7:26B-2.2(c).

"Department" means the New Jersey Department of Environmental Protection.

"Direct owner or operator" means any person that directly owns or operates an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be a direct owner or operator of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance or hazardous waste into the waters or onto the lands of the State.

"Engineering controls" means any physical mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"GIN" means General Information Notice described at N.J.A.C. 7:26B-3.3(a).

"Hazardous substance" means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, N.J.A.C. 7:1E.

"Hazardous waste" means any waste defined as such pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E et seq., that is further defined as a hazardous waste pursuant to the Solid Waste Regulations, N.J.A.C. 7:26-1.6.

"Indirect owner" means any person who holds a controlling interest in a direct owner or operator, holds a controlling interest in another indirect owner, or holds an interest in a partnership which is the indirect owner or a direct owner or operator, of an industrial establishment.

"Industrial establishment" means any place of business or real property at which such business is conducted, having the primary SIC major group number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in, and determined in accordance with, the procedures described in the SIC manual and engaged in operations on or after December 31, 1983, which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes on-site, above or below ground unless otherwise provided at N.J.A.C. 7:26B-2.1. Except as provided below for lease properties, the industrial establishment includes all of the block(s) and lot(s) upon which the business is conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land, or that are used in conjunction with such business. For lease properties, the industrial establishment includes the leasehold and any external tank, surface impoundments, septic systems, or any other structures, vessels, contrivances, or units that provide, or are utilized for, hazardous substances and wastes to or from the leasehold.

"Innovative remedial action technology" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Institutional controls" means a mechanism defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Limited restricted use remedial action" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment, or other person assuming responsibility for the remediation under ISRA and this chapter, to the Department certifying that there has been no discharge of hazardous substances or hazardous wastes on the industrial establishment, or that any such discharge on the industrial establishment or discharge that has migrated from the industrial establishment has been remediated in accordance with procedures approved by the Department and in accordance with N.J.A.C. 7:26E.

"No further action letter" means a written determination by the Department that, based upon an evaluation of the historical use of the industrial establishment, or of an area of concern or areas of concern, as applicable, and any other investigation

or action the Department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the industrial establishment or area(s) of concern, or any other property to which discharged hazardous substances or hazardous wastes originating at the industrial establishment have migrated, or that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the industrial establishment have been remediated in accordance with applicable remediation regulations. The Department may issue a "no further action letter" if hazardous substances or hazardous wastes remain on the industrial establishment or any other property with appropriate engineering and institutional controls.

"Operator" means any person, including users, tenants, or occupants, having and exercising direct actual control of the operations of an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment is not an operator of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

"Owner" means any person who owns the real property of an industrial establishment or who owns the industrial establishment. A holder of a mortgage or other security interest in the industrial establishment is not an owner of the industrial establishment unless or until it loses its exemption under N.J.S.A. 58:10-23.11g4 or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process.

"Person" means any individual or entity, including without limitation, a public or private corporation, company, estate, association, society, firm, partnership, joint stock company, foreign individual or entity, interstate agency or authority, the United States and any of its political subdivisions, the State of New Jersey, or any of the political subdivisions of within the State of New Jersey, or any of the other meanings which apply to the common understanding of the term.

"Preliminary assessment" means the first phase of remediation defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Remedial action" means those actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Remedial action workplan" means a plan defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Remedial investigation" means those actions to investigate a discharge defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Remediation" or "remediate" means all necessary actions defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Remediation agreement" means a document the Department issues for the transfer of an industrial establishment prior to the completion of the remediation.

"Restricted use remedial action" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Restricted use standard" means a remediation standard as defined in N.J.A.C. 7:26E-1.8.

"SIC" means Standard Industrial Classification.

"SIC manual" means the edition of the Standard Industrial Classification manual, prepared by the Office of Management and Budget in the Executive Office of the President of the United States, in effect at the time of the transaction.

"Site investigation" means the collection and evaluation of data defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Transferring ownership or operations" means:

1. Any transaction or proceeding through which an industrial establishment undergoes a change in ownership;
2. The sale or transfer of more than 50 percent of the assets of an industrial establishment, excluding real property within any five-year period as measured on a constant, annual date-specific basis. The term does not include the sale or transfer of equipment or machinery in order to replace, modify, or retool existing equipment or machinery;
3. The execution of a lease for a period of 99 years or longer for an industrial establishment;
4. The dissolution of an entity that is an owner or operator or indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred; or
5. Any transfer of an industrial establishment to a trust, except where grantor and beneficiary are identical or are members of the same family. As used in this paragraph, "family" means any of the relations included at N.J.A.C. 7:26B-2.1(a)4.

"Unrestricted use remedial action" means a remedial action defined as such pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

"Unrestricted use standard" means a remediation standard as defined in N.J.A.C. 7:26E.

7:26B-1.5 Forms and submissions

Any forms or applications required by this chapter may be obtained from and returned to the following address:

Division of Responsible Party Site Remediation
New Jersey Department of Environmental Protection
401 East State Street

7:26B-1.6 Certifications and signatories

(a) Any person submitting an application, workplan, report or other submission to the Department pursuant to ISRA and this chapter shall include the certification provided at (c) below, as applicable. The person submitting the certification provided at (c) below shall sign the certification in accordance with (e) below.

(b) Any person submitting a remediation agreement application or remediation agreement amendment application to the Department pursuant to ISRA and N.J.A.C. 7:26B-4 shall include the certifications provided at (d)1, 2 and 3 below in addition to the certification required pursuant to (a) above, prior to the Department's issuance of the remediation agreement or a remediation agreement amendment. The person submitting the certifications provided at (d)1, 2 and 3 below shall sign the certifications in accordance with (e) below.

(c) The following certification is for any application, workplan, report or other request to the Department pursuant to ISRA and this chapter:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, To the best of my knowledge the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of N.J.S.A. 13:1K-6 et seq., I am personally liable for the penalties set forth at N.J.S.A. 13:1K-13."

(d) The following certifications are for any remediation agreement application or remediation agreement amendment application submitted to the Department pursuant to ISRA and N.J.A.C. 7:26B-4:

1. The owner or operator of the industrial establishment shall execute the following certification:

"I hereby certify that I am fully aware of the requirements of the Industrial Site Recovery Act, N.J.S.A. 13:1K-1 et seq., as it pertains to the remediation of the industrial establishment subject to this remediation agreement. Specifically, I am fully aware of the responsibilities of the owner or operator of the industrial establishment to remediate the site in accordance with ISRA and this chapter. I acknowledge that a remediation agreement has been requested to allow the transaction referenced in the remediation agreement application to proceed prior to completion of all ISRA compliance requirements and that the person entering into the remediation agreement is agreeing to comply with all ISRA requirements. I further acknowledge that the execution of a remediation agreement shall not release [Person] from any responsibilities [Person] have pursuant to ISRA and this chapter."

2. The owner or operator of the industrial establishment shall execute the following certification:

"I hereby certify that I acknowledge that the transaction and industrial establishment that are the subject of this remediation agreement is a transfer of ownership or operations of an industrial establishment as defined by ISRA and N.J.A.C. 7:26B. I further acknowledge that [Person] is subject to penalties for violations of ISRA and this N.J.A.C. 7:26B. I am fully aware of [Person's] responsibilities to allow the Department access to the subject industrial establishment and of the requirements to prepare and submit any documents relevant to the remediation of the subject industrial establishment as required by the Department."

3. The purchaser, transferee, or lessee of the industrial establishment shall execute the following certification:

"I hereby certify that [Person] is the transferee and/or new lessee of the industrial establishment subject to this remediation agreement. I have read this application and am aware of the requirements and conditions of ISRA and the remediation agreement. [Person] expressly agrees to allow the Department, seller, previous owner, previous operator, any other person subject to the remediation agreement, and any of their respective agents or assignees the right to enter the industrial establishment after the ISRA-subject transaction has taken place and/or the lease has been executed for completion of the remediation of the industrial establishment. Additionally, I acknowledge and understand that if a restricted use or limited restricted use remedial action is warranted at the subject industrial establishment, institutional controls and engineering controls as defined in N.J.S.A. 13:1K-6 et seq., N.J.S.A. 58:10B-1 et seq., N.J.A.C. 7:26C, N.J.A.C. 7:26E and N.J.A.C. 7:26B may be necessary."

(e) The certifications required by (a) and (b) above shall be executed as follows:

1. For a corporation or limited liability company, by a principal executive officer of at least the level of vice president;

2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

3. For a municipality, state, Federal or other public agency, by either a principal executive officer or ranking elected official; or

4. By a duly authorized representative of the corporation, partnership, sole proprietorship, municipality, state or Federal or other public agency, as applicable. A person is deemed to be a duly authorized representative if the person is authorized in writing by an individual described in (e)1, 2 or 3 above and the authorization meets the following criteria:

i. The authorization specifies either an individual or a position having responsibility for the overall operation of the industrial establishment or activity, such as the position of plant manager, or a superintendent or person

of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position);

ii. The written authorization is submitted to the Department; and

iii. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the industrial establishment or activity, a new authorization satisfying the requirements of this section shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(f) All signatures required by this section shall be notarized.

7:26B-1.7 Department review

(a) The Department shall review and approve or disapprove all submissions by an owner or operator based on the following criteria:

1. Whether the remediation workplan and report was prepared, implemented or completed in compliance with N.J.A.C. 7:26C, 7:26E and this chapter;

2. Whether all the information and documents required to be submitted to the Department have been submitted; and

3. Whether the information submitted is sufficient, complete or accurate.

(b) The Department shall inform the owner or operator, in writing, of the results of the Department's review of the submission, including any deficiencies in the submittal or required additional remediation. The owner or operator shall then complete all required additional remediation and address any deficiencies prior to the Department's issuance of a no further action letter or authorization letter.

7:26B-1.8 No further action letter and authorization letter

(a) The Department shall issue a no further action letter upon the Department's approval of the remediation of an industrial establishment or area of concern pursuant to ISRA and this chapter. The scope of the no further action letter shall be consistent with the scope of the remediation that the Department has approved.

(b) The Department's issuance of a no further action letter pursuant to ISRA and this chapter may include an authorization for the owner or operator to close operations or transfer ownership or operations of the industrial establishment as designated in the General Information Notice pursuant to N.J.A.C. 7:26B-3.2.

(c) The Department may authorize an owner or operator to transfer ownership or operations of an industrial establishment, or in the case of a cessation of operations authorize the cessation as it relates to ISRA compliance, through the issuance of an authorization letter without, or prior to the issuance of, a no further action letter in the following circumstances:

1. The Department's issuance of a remediation agreement or remediation agreement amendment pursuant to N.J.A.C. 7:26B-4;
2. The Department's approval of a regulated underground storage tank waiver application pursuant to N.J.A.C. 7:26B-5.3(e);
3. The Department's approval of a remediation in progress waiver application pursuant to N.J.A.C. 7:26B-5.4(d);
4. The Department's approval of a minimal environmental concern review application pursuant to N.J.A.C. 7:26B-5.6(e); and
5. The Department's approval of a remedial action workplan deferral pursuant to N.J.A.C. 7:26B-5.8(d).

(d) The issuance of an authorization letter pursuant to (c) above may not relieve the owner or operator or any person responsible for conducting the remediation of the industrial establishment, of the obligations to remediate the industrial establishment pursuant to ISRA, this chapter and any other applicable law.

7:26B-1.9 Right of entry and inspection

(a) The owner or operator shall expressly consent in writing pursuant to ISRA and this chapter to entry of the industrial establishment by the Department and its authorized representatives, upon the presentation of credentials, to inspect the site, buildings and records related to environmental issues and to take samples from the site, in which case the owner or operator shall be provided with split samples upon his or her request, photograph the site and the buildings, and to make copies of the records.

(b) The buyer or transferee of the industrial establishment that has been sold subsequent to obtaining an approved remedial action workplan or remediation agreement from the Department shall:

1. Allow the Department and/or its authorized representatives, upon the presentation of credentials, to enter the transferred premises to inspect the site, buildings and records related to environmental issues, and to take samples from the site, photograph the site and the buildings and to make copies of the records; where the Department takes samples from the site, the buyer or transferee shall be provided with split samples upon his or her request; and
2. Allow access to the transferred premises by the duly authorized representatives of the seller or transferor to implement a duly approved remedial action workplan or comply with the conditions of a remediation agreement.

(c) The owner or operator or other person subject to ISRA or who is a party to a remediation agreement shall as necessary:

1. Have appropriate technical, scientific, and engineering representatives, as necessary, accompany the Department and its authorized

representative during the inspection; and

2. Provide all assistance, through appropriate technical, scientific and engineering representative(s), to the Department and its authorized representative(s) during any site inspection. 7:26B-1.10 Liability for ISRA compliance

(a) Except as provided in (e) below and notwithstanding (f), (g) and (h) below, both the owner and operator are strictly liable without regard to fault, for compliance with ISRA and this chapter.

(b) At the Department's discretion, any other person, including, without limitation, a purchaser, transferee, or mortgagee, may sign a remediation agreement; however, such persons shall become responsible for the remediation of the industrial establishment for compliance with ISRA.

(c) An owner or operator shall not transfer ownership or operations of an industrial establishment until:

1. The Department has issued a no further action letter for the industrial establishment pursuant to N.J.A.C. 7:26B-1.8(a);

2. The Department has approved a remedial action workplan for the industrial establishment pursuant to N.J.A.C. 7:26B-1.7(b);

3. The owner or operator has executed a remediation agreement or remediation agreement amendment issued by the Department pursuant to N.J.A.C. 7:26B-4.1(b); or

4. The Department has issued an authorization letter to the owner or operator pursuant to N.J.A.C. 7:26B-1.8(c).

(d) An owner or operator that is closing operations shall be required to amend the General Information Notice submitted in accordance with N.J.A.C. 7:26B-3.2(a) for any subsequent transfer of ownership or operations of the industrial establishment that occurs prior to (c)1 or 2 above.

(e) Any person, other than the owner or operator of the industrial establishment, that has obtained title to the industrial establishment by deed of foreclosure, by other deed or transfer, or by court order or other process, shall not be deemed an owner or operator of that industrial establishment where the operator had closed operations prior to the transfer of title and where no new industrial establishment has operated under the person's ownership. Nothing contained herein shall be construed as a waiver or release of liability by the Department of an owner or operator subject to the requirements of this chapter for the industrial establishment.

(f) Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of this chapter, the landlord or the tenant may petition the Department to seek ISRA compliance from that party who is responsible pursuant to the provisions of the lease, to comply with the requirements of this chapter. The

petitioning party shall submit the following to the Department at the address provided at N.J.A.C. 7:26C-1.5:

1. A written request to the Department to seek ISRA compliance first from that party that has agreed to be responsible pursuant to the provisions of a lease. The written request shall be in the form of a Landlord/Tenant Petition as specified in Appendix B incorporated herein by reference. The petitioning party shall send a copy of the petition to the other party(s) to the lease, by certified mail, return receipt requested, at the time of the mailing of the petition to the Department; and

2. A copy of the signed lease between the landlord and tenant.

(g) Based on the information submitted pursuant to (f)1 and 2 above, the Department may determine that the lease clearly defines the responsibilities of either person to comply with the provisions of this chapter. The Department shall seek ISRA compliance from the person deemed responsible pursuant to the lease. The Department's determination shall not be construed as a waiver or release of liability by the Department of any other person who may be subject to the requirements of this chapter for the industrial establishment.

(h) The Department may compel compliance by both parties if the Department determines that the lease does not clearly define the responsibilities of the owner or operator of the industrial establishment, or upon the failure by the person responsible pursuant to the lease to comply with the provisions of this chapter.

7:26B-1.11 Civil penalties

(a) Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of the Act or this chapter shall be liable for a civil penalty of not more than \$25,000 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

(b) Penalties shall be collected in a civil action by a summary proceeding under the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(c) Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provision of ISRA or this chapter shall be personally liable for any penalties provided by ISRA or this chapter.

(d) In its discretion, the Department may compromise and settle any claim for a penalty pursuant to ISRA or this chapter.